APPEAL NO. 030963
FILED JUNE 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 20, 2003. With respect to the issues before him, the hearing officer determined that (employer) was not the appellant's (claimant) employer for purposes of the 1989 Act on the date of the claimed injury; that the claimant did not sustain a compensable injury; and that the claimant did not timely report his alleged injury to his employer. In his appeal, the claimant asserts error in each of those determinations. The claimant also argues that the hearing officer erred in denying a continuance and asserts error because his witness was not at the hearing. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed as modified.

The hearing officer did not err in determining that the claimant was not the employee of the employer on the date of the alleged injury. There was conflicting evidence on this issue. The claimant argued that at the time of his injury, he was working as a contract employee with the employer and was paid in cash from the cash register. Mr. S, the claimant's supervisor, denied that the claimant was ever paid in cash and further testified that the employer's payroll records reflect that the claimant was an employee prior to and after the date of injury, but that he was not an employee at the time of the injury. The hearing officer was acting within his province as the fact finder in resolving the conflicts in the evidence against the claimant and in determining that the employer was not the claimant's employer for purposes of the 1989 Act at the time of the alleged injury. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Having affirmed the determination that the employer was not the claimant's employer for purposes of the 1989 Act, we note that the carrier did not have coverage for the claimant relative to the alleged injury. The carrier had coverage for the employer but not for the claimant if he was not an employee of the employer. Accordingly, all findings by the hearing officer beyond finding that the claimant was not an employee of the employer at the time of the alleged injury are stricken as surplusage.

Finally, we consider the claimant's assertion that the hearing officer erred in denying a continuance. The record reflects that the hearing officer apparently denied a request for continuance before the hearing. However, the claimant did not renew his request for a continuance at the hearing and, as such, he did not preserve any error associated with the denial for purposes of appeal.

As modified to strike the surplus findings and conclusions, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES H. MOODY, II**
**901 MAIN STREET**
**DALLAS, TEXAS 75202**.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge